RHINEHART BERG

IBLA 81-636 Decided March 9, 1983

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, declaring mining claims abandoned and void. F-42729 and F-42732 through F-42777.

Vacated and remanded.

1. Mining Claims Generally -- Mining Claims: Determination of Validity -- Mining Claims: Location -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

APPEARANCES: Rhinehart Berg, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Rhinehart Berg appeals the April 15, 1981, decision of the Fairbanks District Office, Bureau of Land Management (BLM), which declared placer mining claims F-42729 and F-42732 through F-42777 abandoned and void. 1/ BLM declared the claims void because the claimants did not file notices of location with BLM within 90 days of location, as required by Departmental regulation 43 CFR 3833.1-2(b), issued pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The location notice shows that the claims were posted on various dates from June 17, 1977, to July 21, 1978, and are captioned amended locations. BLM received copies of

1/ Edna Ogden, Victoria Mitchell, and Thorleif B. Netlesen, co-owners of the claims, received a copy of the BLM decision but neither made an appearance in this appeal.

these location notices on October 23, 1978. The decision also pointed out that at the time of location of the claims, none of the lands were available for appropriation under the mining laws because Ts. 4 and 5 N., R. 18 W., Kateel River meridian, Alaska, were selected by the State of Alaska on March 22, 1974, and that T. 6 N., R. 18 W., Kateel River meridian, was withdrawn on December 18, 1971, by section 11 of the Alaska Native Claims Settlement Act (ANCSA) for selection by the village of Deering, and that even if the notices had been filed timely, the claims would have been declared null and void for that reason.

In order to prevail, appellant must establish that the mining claimants are successor to an interest in the claims located on lands prior to the State selection. American Resources, Ltd., 44 IBLA 220 (1979). With his statement of reasons appellant submitted copies of two letters from Pedro Denton, Chief Mineral Section, State of Alaska Department of Natural Resources, which refers to amending the location of 77 claims and also included the 1973 location notices. Appellant maintains that the location notices filed with BLM in 1978 were the amended locations for claims originally located in 1973, that those claims predate any State selection, and that the recordation of the 1973 claims would be timely under FLPMA. 2/ He asserts that in 1977 the 1973 locations were amended at the request of the State of Alaska, in order to comply with the dimensions allowed under Alaska State law, and conclude that the claims at issue are valid to the extent that they overlie the earlier versions of the claims. 3/

[1] An "amended location" of a claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back

2/ Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, in addition to filing with BLM by Oct. 22, 1979, a copy of the official record of the notice of location, to file with BLM a copy of evidence of the assessment work performed on the claim or a notice of intention to hold the claims within 3 years after the date of the Act, i.e., on or before Oct. 22, 1979, and before Dec. 31 of each calendar year thereafter. The statute also provided that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976). The statutory requirements and consequences are set forth in 43 CFR 3833.1-2, 3833.2-1, and 3833.4. The record before us shows that appellant filed evidence of assessment for the years 1978 and 1979. On remand, BLM should also determine whether appellant made the requisite filings for subsequent years.

3/ Appellant indicates that the subsequent claims cover more land than the 1973 claims. A memorandum to the file dated Apr. 29, 1981, from a BLM employee states that more land is covered by the subsequent locations, but that he did not have the opportunity to compare the notices and eliminate the additional land, because the appeal was filed removing the matter from BLM jurisdiction. See Sierra Club, 57 IBLA 288 (1981).

to the date of the filing of original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. Withdrawal of the land subsequent to the original location will thus not preclude the amended location, provided that the original claim was properly located. United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 441 (9th Cir. 1970); R. Gail Tibbetts, 43 IBLA 210, 219, 86 I.D. 538 (1979).

Appellant's submission on appeal tends to support his position that the 1973 locations were amended in 1977 and 1978. We note, however, that to the extent that these claims embraced land withdrawn by section 11 of ANCSA, locations made in 1973 would, themselves, be null and void ab initio. Ordinarily, a hearing would be appropriate to determine whether these claims at issue can, in fact, be considered amended and, if so, what area was encompassed by the original claims. Fairfield Mining Co., 66 IBLA 115 (1982). However, since BLM has not addressed that issue, we will remand the case, to provide BLM the opportunity to determine in the first instance which of the lands covered by the 1978 filings were covered by the original claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Fairbanks District Office is vacated and the case file remanded to BLM for further consideration.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

James L. Burski
Administrative Judge